

as a means of transportation to gain proximity to vital areas;

(ii) The alternative measure provides protection against the use of a vehicle as a vehicle bomb; and

(iii) Based on comparison of the costs of the alternative measures to the costs of meeting the Commission's requirements using the essential elements of 10 CFR 50.109, the costs of fully meeting the Commission's requirements are not justified by the protection that would be provided.

[74 FR 13971, Mar. 27, 2009]

§ 73.56 Personnel access authorization requirements for nuclear power plants.

(a) *Introduction.* (1) By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR part 50, shall implement the requirements of this section through revisions to its Commission-approved Physical Security Plan.

(2) The licensee shall establish, implement and maintain its access authorization program in accordance with the requirements of this section.

(3) Each applicant for an operating license under the provisions of part 50 of this chapter, and each holder of a combined license under the provisions of part 52 of this chapter, shall implement the requirements of this section before fuel is allowed on site (protected area).

(4) The licensee or applicant may accept, in part or whole, an access authorization program implemented by a contractor or vendor to satisfy appropriate elements of the licensee's access authorization program in accordance with the requirements of this section. Only a licensee shall grant an individual unescorted access. Licensees and applicants shall certify individuals' unescorted access authorization and are responsible to maintain, deny, terminate, or withdraw unescorted access authorization.

(b) *Applicability.* (1) The following individuals shall be subject to an access authorization program:

(i) Any individual to whom a licensee intends to grant unescorted access to nuclear power plant protected or vital areas or any individual for whom a licensee or an applicant intends to certify unescorted access authorization;

(ii) Any individual whose duties and responsibilities permit the individual to take actions by electronic means, either on site or remotely, that could adversely impact the licensee's or applicant's operational safety, security, or emergency preparedness;

(iii) Any individual who has responsibilities for implementing a licensee's or applicant's protective strategy, including, but not limited to, armed security force officers, alarm station operators, and tactical response team leaders; and

(iv) The licensee or applicant access authorization program reviewing official or contractor or vendor access authorization program reviewers.

(2) Other individuals, at the licensee's or applicant's discretion, including employees of a contractor or a vendor who are designated in access authorization program procedures, are subject to an access authorization program that meets the requirements of this section.

(c) *General performance objective.* The licensee's or applicant's access authorization program must provide high assurance that the individuals who are specified in paragraph (b)(1), and, if applicable, paragraph (b)(2) of this section are trustworthy and reliable, such that they do not constitute an unreasonable risk to public health and safety or the common defense and security, including the potential to commit radiological sabotage.

(d) *Background investigation.* In order to grant an individual unescorted access to the protected area or vital area of a nuclear power plant or certify an individual unescorted access authorization, licensees, applicants and contractors or vendors shall ensure that the individual has been subject to a background investigation. The background investigation must include, but is not limited to, the following elements:

(1) *Informed consent.* Licensees, applicants, and contractors or vendors shall not initiate any element of a background investigation without the informed and signed consent of the subject individual. This consent shall include authorization to share personal information with appropriate entities. The licensee or applicant to whom the individual is applying for unescorted

access and unescorted access authorization, respectively, or the contractors or vendors supporting the licensee or applicant shall inform the individual of his or her right to review information collected to assure its accuracy, and provide the individual with an opportunity to correct any inaccurate or incomplete information that is developed by licensees, applicants, or contractors or vendors about the individual.

(i) The subject individual may withdraw his or her consent at any time. Licensees, applicants, and contractors or vendors shall inform the individual that:

(A) Withdrawal of his or her consent will remove the individual's application for access authorization under the licensee's or applicant's access authorization program or contractor or vendor access authorization program; and

(B) Other licensees and applicants shall have access to information documenting the withdrawal. Additionally, the contractors or vendors may have the same access to the information, if such information is necessary for assisting licensees or applicants complying with requirements set forth in this section.

(ii) If an individual withdraws his or her consent, licensees, applicants, and contractors or vendors may not initiate any elements of the background investigation that were not in progress at the time the individual withdrew his or her consent, but shall complete any background investigation elements that are in progress at the time consent is withdrawn. The licensee or applicant shall record the status of the individual's application for unescorted access or unescorted access authorization, respectively. Contractors or vendors may record the status of the individual's application for unescorted access or unescorted access authorization for licensees or applicants. Additionally, licensees, applicants, or contractors or vendors shall collect and maintain the individual's application for unescorted access or unescorted access authorization; his or her withdrawal of consent for the background investigation; the reason given by the individual for the withdrawal; and any pertinent information collected from the back-

ground investigation elements that were completed. This information must be shared with other licensees in accordance with paragraph (o)(6) of this section.

(iii) Licensees, applicants, and contractors or vendors shall inform, in writing, any individual who is applying for unescorted access or unescorted access authorization that the following actions are sufficient cause for denial or unfavorable termination of unescorted access or unescorted access authorization status:

(A) Refusal to provide a signed consent for the background investigation;

(B) Refusal to provide, or the falsification of, any personal history information required under this section, including the failure to report any previous denial or unfavorable termination of unescorted access or unescorted access authorization;

(C) Refusal to provide signed consent for the sharing of personal information with other licensees, applicants, or the contractor or vendors under paragraph (d)(4)(v) of this section; or

(D) Failure to report any arrests or legal actions specified in paragraph (g) of this section.

(2) *Personal history disclosure.* (i) Any individual who is applying for unescorted access or unescorted access authorization shall disclose the personal history information that is required by the licensee's or applicant's access authorization program, including any information that may be necessary for the reviewing official to make a determination of the individual's trustworthiness and reliability.

(ii) Licensees, applicants, and contractors or vendors shall not require an individual to disclose an administrative withdrawal of unescorted access or unescorted access authorization under the requirements of § 73.56(g), (h)(7), or (i)(1)(v) of this section. However, the individual must disclose this information if the individual's unescorted access or unescorted access authorization is administratively withdrawn at the time he or she is seeking unescorted access or unescorted access authorization, or the individual's unescorted access or unescorted access authorization was subsequently denied or terminated

unfavorably by a licensee, applicant, or contractor or vendor.

(3) *Verification of true identity.* Licensees, applicants, and contractors or vendors shall verify the true identity of an individual who is applying for unescorted access or unescorted access authorization in order to ensure that the applicant is the person that he or she has claimed to be. At a minimum, licensees, applicants, and contractors or vendors shall validate that the social security number that the individual has provided is his or hers, and, in the case of foreign nationals, validate the claimed non-immigration status that the individual has provided is correct. In addition, licensees and applicants shall also determine whether the results of the fingerprinting required under § 73.57 confirm the individual's claimed identity, if such results are available.

(4) *Employment history evaluation.* Licensees, applicants, and contractors or vendors shall ensure that an employment history evaluation has been completed on a best effort basis, by questioning the individual's present and former employers, and by determining the activities of the individual while unemployed.

(i) For the claimed employment period, the individual must provide the reason for any termination, eligibility for rehire, and other information that could reflect on the individual's trustworthiness and reliability.

(ii) If the claimed employment was military service the individual shall provide a characterization of service, reason for separation, and any disciplinary actions that could affect a trustworthiness and reliability determination.

(iii) If education is claimed in lieu of employment, the individual shall provide any information related to the claimed education that could reflect on the individual's trustworthiness and reliability and, at a minimum, verify that the individual was registered for the classes and received grades that indicate that the individual participated in the educational process during the claimed period.

(iv) If a previous employer, educational institution, or any other entity with which the individual claims to

have been engaged fails to provide information or indicates an inability or unwillingness to provide information within 3 business days of the request, the licensee, applicant, or contractor or vendor shall:

(A) Document this refusal or unwillingness in the licensee's, applicant's, or contractor's or vendor's record of the investigation; and

(B) Obtain a confirmation of employment, educational enrollment and attendance, or other form of engagement claimed by the individual from at least one alternate source that has not been previously used.

(v) When any licensee, applicant, contractor, or vendor is seeking the information required for an unescorted access or unescorted access authorization decision under this section and has obtained a signed release from the subject individual authorizing the disclosure of such information, other licensees, applicants, contractors and vendors shall make available the personal or access authorization information requested regarding the denial or unfavorable termination of unescorted access or unescorted access authorization.

(vi) In conducting an employment history evaluation, the licensee, applicant, contractor, or vendor may obtain information and documents by electronic means, including, but not limited to, telephone, facsimile, or e-mail. Licensees, applicants, contractors, or vendors shall make a record of the contents of the telephone call and shall retain that record, and any documents or electronic files obtained electronically, in accordance with paragraph (o) of this section.

(5) *Credit history evaluation.* Licensees, applicants, contractors and vendors shall ensure that the full credit history of any individual who is applying for unescorted access or unescorted access authorization is evaluated. A full credit history evaluation must include, but is not limited to, an inquiry to detect potential fraud or misuse of social security numbers or other financial identifiers, and a review and evaluation of all of the information that is provided by a national credit-reporting agency about the individual's credit

history. For individuals including foreign nationals and United States citizens who have resided outside the United States and do not have established credit history that covers at least the most recent seven years in the United States, the licensee, applicant, contractor or vendor must document all attempts to obtain information regarding the individual's credit history and financial responsibility from some relevant entity located in that other country or countries.

(6) *Character and reputation evaluation.* Licensees, applicants, contractors, and vendors shall ascertain the character and reputation of an individual who has applied for unescorted access or unescorted access authorization by conducting reference checks. Reference checks may not be conducted with any person who is known to be a close member of the individual's family, including but not limited to, the individual's spouse, parents, siblings, or children, or any individual who resides in the individual's permanent household. The reference checks must focus on the individual's reputation for trustworthiness and reliability.

(7) *Criminal history review.* The licensee's or applicant's reviewing official shall evaluate the entire criminal history record of an individual who is applying for unescorted access or unescorted access authorization to determine whether the individual has a record of criminal activity that may adversely impact his or her trustworthiness and reliability. A criminal history record must be obtained in accordance with the requirements of § 73.57. For individuals who do not have or are not expected to have unescorted access, a criminal history record of the individual shall be obtained in accordance with the requirements set forth in paragraph (k)(1)(ii) of this section.

(e) *Psychological assessment.* In order to assist in determining an individual's trustworthiness and reliability, licensees, applicants, contractors or vendors shall ensure that a psychological assessment has been completed before the individual is granted unescorted access or certified unescorted access authorization. Individuals who are applying for initial unescorted access or unescorted access authorization, or

who have not maintained unescorted access or unescorted access authorization for greater than 365 days, shall be subject to a psychological assessment. The psychological assessment must be designed to evaluate the possible adverse impact of any noted psychological characteristics on the individual's trustworthiness and reliability.

(1) A licensed psychologist or psychiatrist with the appropriate training and experience shall conduct the psychological assessment.

(2) The psychological assessment must be conducted in accordance with the applicable ethical principles for conducting such assessments established by the American Psychological Association or American Psychiatric Association.

(3) At a minimum, the psychological assessment must include the administration and interpretation of a standardized, objective, professionally-accepted psychological test that provides information to identify indications of disturbances in personality or psychopathology that may have adverse implications for an individual's trustworthiness and reliability. A psychiatrist or psychologist specified in paragraph (e) of this section shall establish the predetermined thresholds for each scale, in accordance with paragraph (e)(2) of this section, that must be applied in interpreting the results of the psychological test to determine whether an individual must be interviewed by a licensed psychiatrist or psychologist, under § 73.56(e)(4)(i) of this section.

(4) The psychological assessment must include a clinical interview:

(i) If an individual's scores on the psychological test in paragraph (e)(3) of this section identify indications of disturbances in personality or psychopathology that may have implications for an individual's trustworthiness and reliability; or

(ii) If the individual is a member of the population that performs one or more job functions that are critical to the safe and secure operation of the licensee's facility, as defined in paragraph (i)(1)(v)(B) of this section.

(5) In the course of conducting a psychological assessment for those individuals who are specified in paragraph (h) of this section for initial unescorted

access or unescorted access authorization category, if the licensed psychologist or psychiatrist identifies or discovers any information, including a medical condition, that could adversely impact the individual's fitness for duty or trustworthiness and reliability, the licensee, applicant, or contractor or vendor shall ensure that the psychologist or psychiatrist contact appropriate medical personnel to obtain further information as need for a determination. The results of the evaluation and a recommendation shall be provided to the licensee's or applicant's reviewing official.

(6) During psychological reassessments, if the licensed psychologist or psychiatrist identifies or discovers any information, including a medical condition, that could adversely impact the fitness for duty or trustworthiness and reliability of those individuals who are currently granted unescorted access or certified unescorted access authorization status, he or she shall inform (1) the reviewing official of the discovery within 24 hours of the discovery and (2) the medical personnel designated in the site implementing procedures, who shall ensure that an appropriate evaluation of the possible medical condition is conducted under the requirements of part 26 of this chapter. The results of the evaluation and a recommendation shall be provided to the licensee's or applicant's reviewing official.

(f) *Behavioral observation.* (1) Licensee and applicant access authorization programs must include a behavioral observation program that is designed to detect behaviors or activities that may constitute an unreasonable risk to the health and safety of the public and common defense and security, including a potential threat to commit radiological sabotage. Licensees, applicants and contractors or vendors must ensure that the individuals specified in paragraph (b)(1) and, if applicable, (b)(2) of this section are subject to behavioral observation.

(2) Each person subject to the behavioral observation program shall be responsible for communicating to the licensee or applicant observed behaviors of individuals subject to the requirements of this section. Such behaviors

include any behavior of individuals that may adversely affect the safety or security of the licensee's facility or that may constitute an unreasonable risk to the public health and safety or the common defense and security, including a potential threat to commit radiological sabotage.

(i) Licensees, applicants, and contractors or vendors shall ensure that individuals who are subject to this section also successfully complete initial behavioral observation training and requalification behavior observation training as required in paragraphs (f)(2)(ii) and (iii) of this section.

(ii) Behavioral observation training must be:

(A) Completed before the licensee grants unescorted access or certifies unescorted access authorization or an applicant certifies unescorted access authorization, as defined in paragraph (h)(4)(ii) of this section,

(B) Current before the licensee grants unescorted access update or reinstatement or licensee or applicant certifies unescorted access authorization reinstatement as defined in paragraph (h)(4)(ii) of this section, and

(C) Maintained in a current status during any period of time an individual possesses unescorted access or unescorted access authorization in accordance with paragraph (f)(2)(iv) of this section.

(iii) For initial behavioral observation training, individuals shall demonstrate completion by passing a comprehensive examination that addresses the knowledge and abilities necessary to detect behavior or activities that have the potential to constitute an unreasonable risk to the health and safety of the public and common defense and security, including a potential threat to commit radiological sabotage. Remedial training and re-testing are required for individuals who fail to satisfactorily complete the examination.

(iv) Individuals shall complete refresher training on a nominal 12-month frequency, or more frequently where the need is indicated. Individuals may take and pass a comprehensive examination that meets the requirements of paragraph (f)(2)(iii) of this section in

lieu of completing annual refresher training.

(v) Initial and refresher training may be delivered using a variety of media, including, but not limited to, classroom lectures, required reading, video, or computer-based training systems. The licensee, applicant, or contractor or vendor shall monitor the completion of training.

(3) Individuals who are subject to an access authorization program under this section shall at a minimum, report any concerns arising from behavioral observation, including, but not limited to, concerns related to any questionable behavior patterns or activities of others to the reviewing official, his or her supervisor, or other management personnel designated in their site procedures. The recipient of the report shall, if other than the reviewing official, promptly convey the report to the reviewing official, who shall reassess the reported individual's unescorted access or unescorted access authorization status. The reviewing official shall determine the elements of the reassessment based on the accumulated information of the individual. If the reviewing official has a reason to believe that the reported individual's trustworthiness or reliability is questionable, the reviewing official shall either administratively withdraw or terminate the individual's unescorted access or unescorted access authorization while completing the re-evaluation or investigation. If the reviewing official determines from the information provided that there is cause for additional action, the reviewing official may inform the supervisor of the reported individual.

(g) *Self-reporting of legal actions.* (1) Any individual who has applied for unescorted access or unescorted access authorization or is maintaining unescorted access or unescorted access authorization under this section shall promptly report to the reviewing official, his or her supervisor, or other management personnel designated in site procedures any legal action(s) taken by a law enforcement authority or court of law to which the individual has been subject that could result in incarceration or a court order or that requires a court appearance, including

but not limited to an arrest, an indictment, the filing of charges, or a conviction, but excluding minor civil actions or misdemeanors such as parking violations or speeding tickets. The recipient of the report shall, if other than the reviewing official, promptly convey the report to the reviewing official. On the day that the report is received, the reviewing official shall evaluate the circumstances related to the reported legal action(s) and re-determine the reported individual's unescorted access or unescorted access authorization status.

(2) The licensee or applicant shall inform the individual of this obligation, in writing, prior to granting unescorted access or certifying unescorted access authorization.

(h) *Granting unescorted access and certifying unescorted access authorization.* Licensees and applicants shall implement the requirements of this paragraph for granting or certifying initial or reinstated unescorted access or unescorted access authorization. The investigatory information collected to satisfy the requirements of this section for individuals who are being considered for unescorted access or unescorted access authorization shall be valid for a trustworthiness and reliability determination by a licensee or applicant for 30 calendar days.

(1) *Determination basis.* (i) The licensee's or applicant's reviewing official shall determine whether to grant, certify, deny, unfavorably terminate, maintain, or administratively withdraw an individual's unescorted access or unescorted access authorization status, based on an evaluation of all of the information required by this section.

(ii) The licensee's or applicant's reviewing official may not grant unescorted access or certify unescorted access authorization status to an individual until all of the information required by this section has been evaluated by the reviewing official and the reviewing official has determined that the accumulated information supports a determination of the individual's trustworthiness and reliability. However, the reviewing official may deny or terminate unescorted access or unescorted access authorization of any

individual based on disqualifying information even if not all the information required by this section has been collected or evaluated.

(2) *Unescorted access for NRC-certified personnel.* Licensees and applicants shall grant unescorted access to any individual who has been certified by the Nuclear Regulatory Commission as suitable for such access.

(3) *Access denial.* Licensees or applicants may not permit an individual, who is identified as having an access-denied status by another licensee subject to this section, or has an access authorization status other than favorably terminated, to enter any nuclear power plant protected area or vital area, under escort or otherwise, or take actions by electronic means that could adversely impact the licensee's or applicant's safety, security, or emergency response or their facilities, under supervision or otherwise, except upon completion of the initial unescorted access authorization process.

(4) *Granting unescorted access and certifying unescorted access authorization—*

(i) *Initial unescorted access or unescorted access authorization.* In satisfying the requirements of paragraph (h)(1) of this section, for individuals who have never held unescorted access or unescorted access authorization status or whose unescorted access or unescorted access authorization status has been interrupted for a period of 3 years or more, the licensee, applicant, or contractor or vendor shall satisfy the requirements of paragraphs (d), (e), (f), and (g) of this section. In meeting requirements set forth in paragraph (d)(4) of this section, the licensee, applicant, or contractor or vendor shall evaluate the 3 years before the date on which the application for unescorted access was submitted, or since the individual's eighteenth birthday, whichever is shorter. For the 1-year period proceeding the date upon which the individual applies for unescorted access or unescorted access authorization, the licensee, applicant or contractor or vendor shall ensure that the employment history evaluation is conducted with every employer, regardless of the length of employment. For the remaining 2-year period, the licensee, applicant, or contractor or vendor shall en-

sure that the employment history evaluation is conducted with the employer by whom the individual claims to have been employed the longest within each calendar month.

(ii) *Reinstatement of unescorted access.* In satisfying the requirements of paragraph (h)(1) of this section, for individuals who have previously been granted unescorted access or unescorted access authorization, but whose access had been terminated under favorable conditions, licensees, applicants or contractors or vendors shall satisfy the requirements of paragraphs (d), (e), (f), and (g) of this section, with consideration of the specific requirements for periods of interruption described below in paragraphs (h)(4)(ii)(A) or (h)(4)(ii)(B) of this section, as applicable. However, for individuals whose unescorted access or unescorted access authorization was interrupted for less than or equal to 30 calendar days, licensees, applicants, or contractors or vendors must only satisfy the requirements set forth in paragraphs (d)(1), (d)(2), and (d)(3) of this section. The applicable periods of interruption are determined by the number of calendar days between the day after the individual's access was terminated and the day upon which the individual applies for unescorted access or unescorted access authorization.

(A) For individuals whose last unescorted access or unescorted access authorization status has been interrupted for more than 30 calendar days but less than or equal to 365 calendar days, the licensee, applicant or contractor or vendor shall complete the individual's employment history evaluation in accordance with the requirements of paragraph (d)(4) of this section, within 5 business days after reinstatement. The licensee, applicant, or contractor or vendor shall ensure that the employment history evaluation has been conducted with the employer by whom the individual claims to have been employed the longest within the calendar month. However, if the employment history evaluation is not completed within 5 business days of reinstatement due to circumstances that

are outside of the licensee's, applicant's, or contractor's or vendor's control and the licensee or applicant, contractor or vendor is not aware of any potentially disqualifying information regarding the individual within the past 5 years, the licensee may extend the individual's unescorted access an additional 5 business days. If the employment history evaluation is not completed within this extended 5 business days, the licensee shall administratively withdraw unescorted access and complete the employment history evaluation in accordance with § 73.56(d)(4) of this section. For re-certification of unescorted access authorization, prior to re-certification of unescorted access authorization status of an individual, the licensee or applicant shall complete all the elements stated above including drug screening and employment evaluation.

(B) For individuals whose last unescorted access or unescorted access authorization status has been interrupted for greater than 365 calendar days but fewer than 3 years the licensee, applicant or contractor or vendor shall evaluate the period of time since the individual last held unescorted access or unescorted access authorization status, up to and including the day the individual applies for re-instated unescorted access authorization. For the 1-year period proceeding the date upon which the individual applies for unescorted access authorization, the licensee, applicant, or contractor or vendor shall ensure that the employment history evaluation is conducted with every employer, regardless of the length of employment. For the remaining period, the licensee, applicant or contractor or vendor shall ensure that the employment history evaluation is conducted with the employer by whom the individual claims to have been employed the longest within each calendar month. In addition, the individual shall be subject to the psychological assessment required in § 73.56(e).

(5) *Accepting unescorted access authorization from other access authorization programs.* Licensees who are seeking to grant unescorted access or certify unescorted access authorization or applicants who are seeking to certify

unescorted access authorization to an individual who is subject to another access authorization program or another access authorization program that complies with this section may rely on those access authorization programs or access authorization program elements to comply with the requirements of this section. However, the licensee who is seeking to grant unescorted access or the licensee or applicant who is seeking to certify unescorted access authorization shall ensure that the program elements to be accepted have been maintained consistent with the requirements of this section by the other access authorization program.

(6) *Information sharing.* To meet the requirements of this section, licensees, applicants, and contractors or vendors may rely upon the information that other licensees, applicants, and contractors or vendors who are also subject to this section, have gathered about individuals who have previously applied for unescorted access or unescorted access authorization, and developed about individuals during periods in which the individuals maintained unescorted access or unescorted access authorization status.

(i) Maintaining unescorted access or unescorted access authorization.

(1) Individuals may maintain unescorted access or unescorted access authorization status under the following conditions:

(i) The individual remains subject to a behavioral observation program that complies with the requirements of § 73.56(f) of this section.

(ii) The individual successfully completes behavioral observation refresher training or testing on the nominal 12-month frequency required in § 73.56(f)(2)(ii) of this section.

(iii) The individual complies with the licensee's or applicant's access authorization program policies and procedures to which he or she is subject, including the self-reporting of legal actions responsibility specified in paragraph (g) of this section.

(iv) The individual is subject to an annual supervisory review conducted in accordance with the requirements of the licensee's or applicant's behavioral observation program. The individual

shall be subject to a supervisory interview in accordance with the requirements of the licensee's or applicant's behavioral observation program, if the supervisor does not have the frequent interaction with the individual throughout the review period needed to form an informed and reasonable opinion regarding the individual's behavior, trustworthiness, and reliability.

(v) The licensee's or applicant's reviewing official determines that the individual continues to be trustworthy and reliable. This determination must, at a minimum, be based on the following:

(A) A criminal history update and credit history re-evaluation for any individual with unescorted access. The criminal history update and credit history re-evaluation must be completed within 5 years of the date on which these elements were last completed.

(B) For individuals who perform one or more of the job functions described in this paragraph, the trustworthiness and reliability determination must be based on a criminal history update and credit history re-evaluation within three years of the date on which these elements were last completed, or more frequently, based on job assignment as determined by the licensee or applicant, and a psychological re-assessment within 5 years of the date on which this element was last completed:

(1) Individuals who have extensive knowledge of defensive strategies and design and/or implementation of the plant's defense strategies, including—

(i) Site security supervisors;

(ii) Site security managers;

(iii) Security training instructors; and

(iv) Corporate security managers;

(2) Individuals in a position to grant an applicant unescorted access or unescorted access authorization, including site access authorization managers;

(3) Individuals assigned a duty to search for contraband or other items that could be used to commit radiological sabotage (*i.e.*, weapons, explosives, incendiary devices);

(4) Individuals who have access, extensive knowledge, or administrative control over plant digital computer and communication systems and net-

works as identified in § 73.54, including—

(i) Plant network systems administrators;

(ii) IT personnel who are responsible for securing plant networks; or

(5) Individuals qualified for and assigned duties as: armed security officers, armed responders, alarm station operators, response team leaders, and armorers as defined in the licensee's or applicant's Physical Security Plan; and reactor operators, senior reactor operators and non-licensed operators. Non-licensed operators include those individuals responsible for the operation of plant systems and components, as directed by a reactor operator or senior reactor operator. A non-licensed operator also includes individuals who monitor plant instrumentation and equipment and principally perform their duties outside of the control room.

(C) The criminal history update and the credit history re-evaluation shall be completed within 30 calendar days of each other.

(vi) If the criminal history update, credit history re-evaluation, psychological re-assessment, if required, and supervisory review and interview, if applicable, have not been completed and the information evaluated by the reviewing official within the time frame specified under paragraph (v) of this section, the licensee or applicant shall administratively withdraw the individual's unescorted access or unescorted access authorization until these requirements have been met.

(2) If an individual who has unescorted access or unescorted access authorization status is not subject to an access authorization program that meets the requirements of this part for more than 30 continuous days, then the licensee or applicant shall terminate the individual's unescorted access or unescorted access authorization status and the individual shall meet the requirements in this section, as applicable, to regain unescorted access or unescorted access authorization.

(j) *Access to vital areas.* Licensees or applicants shall establish, implement, and maintain a list of individuals who are authorized to have unescorted access to specific nuclear power plant

vital areas during non-emergency conditions. The list must include only those individuals who have a continued need for access to those specific vital areas in order to perform their duties and responsibilities. The list must be approved by a cognizant licensee or applicant manager or supervisor who is responsible for directing the work activities of the individual who is granted unescorted access to each vital area, and updated and re-approved no less frequently than every 31 days.

(k) *Trustworthiness and reliability of background screeners and access authorization program personnel.* Licensees, applicants, and contractors or vendors shall ensure that any individual who collects, processes, or has access to personal information that is used to make unescorted access or unescorted access authorization determinations under this section has been determined to be trustworthy and reliable.

(1) *Background screeners.* Licensees, applicants, and contractors or vendors who rely on individuals who are not directly under their control to collect and process information that will be used by a reviewing official to make unescorted access or unescorted access authorization determinations shall ensure that a trustworthiness and reliability evaluation of such individuals has been completed to support a determination that such individuals are trustworthy and reliable. At a minimum, the following checks are required:

- (i) Verify the individual's true identity as specified in paragraph (d)(3) of this section;
- (ii) A local criminal history review and evaluation based on information obtained from an appropriate State or local court or agency in which the individual resided;
- (iii) A credit history review and evaluation;
- (iv) An employment history review and evaluation covering the past 3 years; and
- (v) An evaluation of character and reputation.

(2) *Access authorization program personnel.* Licensees, applicants, and contractors or vendors shall ensure that any individual who evaluates personal information for the purpose of proc-

essing applications for unescorted access or unescorted access authorization, including but not limited to a psychologist or psychiatrist who conducts psychological assessments under § 73.56(e), has access to the files, records, and personal information associated with individuals who have applied for unescorted access or unescorted access authorization, or is responsible for managing any databases that contain such files, records, and personal information has been determined to be trustworthy and reliable, as follows:

(i) The individual is subject to an access authorization program that meets the requirements of this section; or

(ii) The licensee, applicant, and contractor or vendor determines that the individual is trustworthy and reliable based upon an evaluation that meets the requirements of § 73.56(d)(1) through (d)(6) and (e) and either a local criminal history review and evaluation as specified in § 73.56(k)(1)(ii) or a criminal history check that meets the requirements of § 73.56(d)(7).

(1) *Review procedures.* Each licensee and applicant shall include a procedure for the notification of individuals who are denied unescorted access, unescorted access authorization, or who are unfavorably terminated. Additionally, procedures must include provisions for the review, at the request of the affected individual, of a denial or unfavorable termination of unescorted access or unescorted access authorization that may adversely affect employment. The procedure must contain a provision to ensure the individual is informed of the grounds for the denial or unfavorable termination and allow the individual an opportunity to provide additional relevant information and an opportunity for an objective review of the information upon which the denial or unfavorable termination of unescorted access or unescorted access authorization was based. The procedure must provide for an impartial and independent internal management review. Licensees and applicants shall not grant unescorted access or certify unescorted access authorization, or permit the individual to maintain unescorted access or unescorted access

authorization during the review process.

(m) *Protection of information.* Each licensee, applicant, contractor, or vendor shall establish and maintain a system of files and procedures to ensure personal information is not disclosed to unauthorized persons.

(1) Licensees, applicants and contractors or vendors shall obtain signed consent from the subject individual that authorizes the disclosure of any information collected and maintained under this section before disclosing the information, except for disclosures to the following individuals:

(i) The subject individual or his or her representative, when the individual has designated the representative in writing for specified unescorted access authorization matters;

(ii) NRC representatives;

(iii) Appropriate law enforcement officials under court order;

(iv) A licensee's, applicant's, or contractor's or vendor's representatives who have a need to have access to the information in performing assigned duties, including determinations of trustworthiness and reliability and audits of access authorization programs;

(v) The presiding officer in a judicial or administrative proceeding that is initiated by the subject individual;

(vi) Persons deciding matters under the review procedures in paragraph (k) of this section; or

(vii) Other persons pursuant to court order.

(2) All information pertaining to a denial or unfavorable termination of the individual's unescorted access or unescorted access authorization shall be promptly provided, upon receipt of a written request by the subject individual or his or her designated representative as designated in writing. The licensee or applicant may redact the information to be released to the extent that personal privacy information, including the name of the source of the information is withheld.

(3) A contract with any individual or organization who collects and maintains personal information that is relevant to an unescorted access or unescorted access authorization determination must require that such records be held in confidence, except as

provided in paragraphs (m)(1) through (m)(2) of this section.

(4) Licensees, applicants, or contractors or vendors and any individual or organization who collects and maintains personal information on behalf of a licensee, applicant, or contractor or vendor, shall establish, implement, and maintain a system and procedures for the secure storage and handling of the information collected.

(n) *Audits and corrective action.* Each licensee and applicant shall be responsible for the continuing effectiveness of the access authorization program, including access authorization program elements that are provided by the contractors or vendors, and the access authorization programs of any of the contractors or vendors that are accepted by the licensee or applicant. Each licensee, applicant, and contractor or vendor shall ensure that access authorization programs and program elements are audited to confirm compliance with the requirements of this section and those comprehensive actions are taken to correct any non-conformance that is identified.

(1) Each licensee and applicant shall ensure that its entire access authorization program is audited nominally every 24 months. Licensees, applicants and contractors or vendors are responsible for determining the appropriate frequency, scope, and depth of additional auditing activities within the nominal 24-month period based on the review of program performance indicators, such as the frequency, nature, and severity of discovered problems, personnel or procedural changes, and previous audit findings.

(2) Access authorization program services that are provided to a licensee or applicant by contractor or vendor personnel who are off site or are not under the direct daily supervision or observation of the licensee's or applicant's personnel must be audited by the licensee or applicant on a nominal 12-month frequency. In addition, any access authorization program services that are provided to contractors or vendors by subcontractor personnel who are off site or are not under the direct daily supervision or observation of the contractor's or vendor's personnel

must be audited by the licensee or applicant on a nominal 12-month frequency.

(3) Licensee's and applicant's contracts with contractors or vendors must reserve the licensee's or applicant's right to audit the contractors or vendors and the contractor's or vendor's subcontractors providing access authorization program services at any time, including at unannounced times, as well as to review all information and documentation that is reasonably relevant to the performance of the program.

(4) Licensee's and applicant's contracts with the contractors or vendors, and contractors' or vendors' contracts with subcontractors, must also require that the licensee or applicant shall be provided access to and be permitted to take away copies of any documents or data that may be needed to assure that the contractor or vendor and its subcontractors are performing their functions properly and that staff and procedures meet applicable requirements.

(5) Audits must focus on the effectiveness of the access authorization program or program element(s), as appropriate. At least one member of the licensee or applicant audit team shall be a person who is knowledgeable of and practiced with meeting the performance objectives and requirements of the access authorization program or program elements being audited. The individuals performing the audit of the access authorization program or program element(s) shall be independent from both the subject access authorization programs' management and from personnel who are directly responsible for implementing the access authorization program or program elements being audited.

(6) The results of the audits, along with any recommendations, must be documented in the site corrective action program in accordance with § 73.55(b)(10) and reported to senior management having responsibility in the area audited and to management responsible for the access authorization program. Each audit report must identify conditions that are adverse to the proper performance of the access authorization program, the cause of the condition(s), and, when appro-

priate, recommended corrective actions, and corrective actions taken. The licensee, applicant, or contractor or vendor shall review the audit findings and take any additional corrective actions, to include re-auditing of the deficient areas where indicated, to preclude repetition of the condition.

(7) Licensees and applicants may jointly conduct audits, or may accept audits of the contractors or vendors that were conducted by other licensees and applicants who are subject to this section, if the audit addresses the services obtained from the contractor or vendor by each of the sharing licensees and applicants. The contractors or vendors may jointly conduct audits, or may accept audits of its subcontractors that were conducted by other licensees, applicants, or contractors or vendors who are subject to this section, if the audit addresses the services obtained from the subcontractor by each of the sharing licensees, applicants, and the contractors or vendors.

(i) Licensees, applicants, and contractors or vendors shall review audit records and reports to identify any areas that were not covered by the shared or accepted audit and ensure that authorization program elements and services upon which the licensee, applicant, or contractor or vendor relies are audited, if the program elements and services were not addressed in the shared audit.

(ii) Sharing licensees and applicants need not re-audit the same contractor or vendor for the same time. Sharing contractors or vendors need not re-audit the same subcontractor for the same time.

(iii) Sharing licensees, applicants, and contractors or vendors shall maintain a copy of the shared audits, including findings, recommendations, and corrective actions.

(o) *Records.* Licensee, applicant, and contractors or vendors shall maintain the records that are required by the regulations in this section for the period specified by the appropriate regulation. If a retention period is not otherwise specified, these records must be retained until the Commission terminates the facility's license, certificate, or other regulatory approval.

(1) Records may be stored and archived electronically, provided that the method used to create the electronic records meets the following criteria:

- (i) Provides an accurate representation of the original records;
- (ii) Prevents unauthorized access to the records;
- (iii) Prevents the alteration of any archived information and/or data once it has been committed to storage; and
- (iv) Permits easy retrieval and re-creation of the original records.

(2) Licensees and applicants who are subject to this section shall retain the following records:

- (i) Records of the information that must be collected under paragraphs (d) and (e) of this section that results in the granting of unescorted access or certifying of unescorted access authorization for at least 5 years after the licensee or applicant terminates or denies an individual's unescorted access or unescorted access authorization or until the completion of all related legal proceedings, whichever is later;

- (ii) Records pertaining to denial or unfavorable termination of unescorted access or unescorted access authorization and related management actions for at least 5 years after the licensee or applicant terminates or denies an individual's unescorted access or unescorted access authorization or until the completion of all related legal proceedings, whichever is later; and

- (iii) Documentation of the granting and termination of unescorted access or unescorted access authorization for at least 5 years after the licensee or applicant terminates or denies an individual's unescorted access or unescorted access authorization or until the completion of all related legal proceedings, whichever is later. Contractors or vendors may maintain the records that are or were pertinent to granting, certifying, denying, or terminating unescorted access or unescorted access authorization that they collected for licensees or applicants. If the contractors or vendors maintain the records on behalf of a licensee or an applicant, they shall follow the record retention requirement specified in this section. Upon termi-

nation of a contract between the contractor and vendor and a licensee or applicant, the contractor or vendor shall provide the licensee or applicant with all records collected for the licensee or applicant under this chapter.

(3) Licensees, applicants, and contractors or vendors shall retain the following records for at least 3 years or until the completion of all related proceedings, whichever is later:

- (i) Records of behavioral observation training conducted under paragraph (f)(2) of this section; and

- (ii) Records of audits, audit findings, and corrective actions taken under paragraph (n) of this section.

(4) Licensees, applicants, and contractors or vendors shall retain written agreements for the provision of services under this section, for three years after termination or completion of the agreement, or until completion of all proceedings related to a denial or unfavorable termination of unescorted access or unescorted access authorization that involved those services, whichever is later.

(5) Licensees, applicants, and contractors or vendors shall retain records of the background investigations, psychological assessments, supervisory reviews, and behavior observation program actions related to access authorization program personnel, conducted under paragraphs (d) and (e) of this section, for the length of the individual's employment by or contractual relationship with the licensee, applicant, or the contractor or vendor and three years after the termination of employment, or until the completion of any proceedings relating to the actions of such access authorization program personnel, whichever is later.

(6) Licensees, applicants, and the contractors or vendors who have been authorized to add or manipulate data that is shared with licensees subject to this section shall ensure that data linked to the information about individuals who have applied for unescorted access or unescorted access authorization, which is specified in the licensee's or applicant's access authorization program documents, is retained.

(i) If the shared information used for determining individual's trustworthiness and reliability changes or new or additional information is developed about the individual, the licensee, applicants, and the contractors or vendors that acquire this information shall correct or augment the data and ensure it is shared with licensees subject to this section. If the changed, additional or developed information has implications for adversely affecting an individual's trustworthiness and reliability, the licensee, applicant, or the contractor or vendor who discovered or obtained the new, additional or changed information, shall, on the day of discovery, inform the reviewing official of any licensee or applicant access authorization program under which the individual is maintaining his or her unescorted access or unescorted access authorization status of the updated information.

(ii) The reviewing official shall evaluate the shared information and take appropriate actions, which may include denial or unfavorable termination of the individual's unescorted access authorization. If the notification of change or updated information cannot be made through usual methods, licensees, applicants, and the contractors or vendors shall take manual actions to ensure that the information is shared as soon as reasonably possible. Records maintained in any database(s) must be available for NRC review.

(7) If a licensee or applicant administratively withdraws an individual's unescorted access or unescorted access authorization status caused by a delay in completing any portion of the background investigation or for a licensee or applicant initiated evaluation, or re-evaluation that is not under the individual's control, the licensee or applicant shall record this administrative action to withdraw the individual's unescorted access or unescorted access authorization with other licensees subject to this section. However, licensees and applicants shall not document this administrative withdrawal as denial or unfavorable termination and shall not respond to a suitable inquiry conducted under the provisions of 10 CFR parts 26, a background investigation conducted under the provisions of this section, or

any other inquiry or investigation as denial nor unfavorable termination. Upon favorable completion of the background investigation element that caused the administrative withdrawal, the licensee or applicant shall immediately ensure that any matter that could link the individual to the administrative action is eliminated from the subject individual's access authorization or personnel record and other records, except if a review of the information obtained or developed causes the reviewing official to unfavorably terminate or deny the individual's unescorted access.

[74 FR 13979, Mar. 27, 2009]

§ 73.57 Requirements for criminal history records checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information.

(a) *General.* (1) Each licensee who is authorized to operate a nuclear power reactor under part 50 of this chapter, or to engage in an activity subject to regulation by the Commission shall comply with the requirements of this section.

(2) Each applicant for a license to operate a nuclear power reactor under part 50 of this chapter or to engage in an activity subject to regulation by the Commission, as well as each entity who has provided written notice to the Commission of intent to file an application for licensing, certification, permitting, or approval of a product subject to regulation by the Commission shall submit fingerprints for those individuals who will have access to Safeguards Information.

(3) Before receiving its operating license under part 50 of this chapter or before the Commission makes its finding under § 52.103(g) of this chapter, each applicant for a license to operate a nuclear power reactor (including an applicant for a combined license) may submit fingerprints for those individuals who will require unescorted access to the nuclear power facility.

(b) *General performance objective and requirements.* (1) Except those listed in paragraph (b)(2) of this section, each licensee subject to the provisions of this